

REMARKS

Claims 1-6 and 8-26 are pending.

Claims 1-6, and 8-27 are pending after entry of the amendments set forth herein.

Claims 1-6 and 8-26 were examined.

Claims 1-6 and 8-26 were rejected.

Claims 1, 17, 21 and 24 have been amended and claim 27 has been reinstated (formerly claim 7).

A Corrected Figure 2 drawing is submitted herewith.

In view of the following remarks, the Examiner is respectfully requested to withdraw the rejections and allow Claims 1-6 and 8-27, the only claims pending in this application.

Amendments

Claims 1, 17 21 and 24 have been amended to specify that each reaction zone is defined by a bore through the spacer layer. Support for this amendment may be found, for example, at page 6, lines 3-4 and Figs. 2-5. Claims 1 and 24 have been further amended to remove "wherein at least one of said reagent compositions is a redox reagent system" from the claims.

Claim 27, formerly claim 7, has been reinstated.

No new matter has been added by these amendments. Accordingly, the Applicant respectfully requests the entry of these amendments.

Drawings

The Applicant appreciates the acceptance of the proposed drawing correction. A corrected drawing is submitted herewith in the form of a substitute drawing sheet which includes the corrected drawing (FIG. 2), as well as original FIGS. 1, 3 and 4.

REJECTION UNDER 35 U.S.C. §102(a)

Claims 1, 2, 4, 8-12, 14, and 17-19 have been rejected under 35 USC §102(a) as being

anticipated by Schibli (EP 1167538). The Applicant respectfully submits that Schibli (EP 1167538) is not a proper prior art reference as the publication date of this reference is subsequent to the filing date of the instant application. Accordingly, the Applicant respectfully requests this rejection be withdrawn.

REJECTION UNDER 35 U.S.C. §103(a)

Claim 3 has been rejected under 35 USC §103(a) as being unpatentable over Schibli (EP 1167538) in view of Yee (US 5,672,256). For reasons analogous to those described above, i.e., Schibli is not a proper prior art reference, the Applicant respectfully requests that this rejection be withdrawn.

Claims 13 and 15 have been rejected under 35 USC §103(a) as being unpatentable over Schibli (EP 1167538) in view of Hodges et al. (US 6,413,410). For reasons analogous to those described above, i.e., Schibli is not a proper prior art reference, the Applicant respectfully requests that this rejection be withdrawn. Rejection of the claims under 35 USC §103(a) as being unpatentable over Hodges et al. (US 6,413,410) is addressed in detail below.

In regards to Hodges et al., the applicant's attorney would like to apologize for any confusion caused by the previous assertion that Hodges et al. should be disqualified as a prior art reference against the claimed invention. The applicant's attorney has found that the Hodges et al. reference and the instant applicant were not, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 16, 20 and 24 have been rejected under 35 USC §103(a) as being unpatentable over Schibli (EP 1167538). For reasons analogous to those described above, i.e., Schibli is not a proper prior art reference, the Applicant respectfully requests that this rejection be withdrawn.

Claims 21, 23, 25 and 26 have been rejected under 35 USC §103(a) as being unpatentable over Schibli (EP 1167538) in view of Leader et al. (US 5,421,981). For reasons analogous to those described above, i.e., Schibli is not a proper prior art reference, the Applicant respectfully requests that this rejection be withdrawn.

Claim 22 has been rejected under 35 USC §103(a) as being unpatentable over Schibli (EP 1167538) in view of Leader et al. (US 5,421,981) and further in view of Guruswamy et al. (US 5,004,583). For reasons analogous to those described above, i.e., Schibli is not a proper prior art reference, the Applicant respectfully requests that this rejection be withdrawn.

Claims 1, 2, 4-6, 8-20 and 24 have been rejected under 35 USC §103(a) as being unpatentable over Hodges et al. (US 6,413,410). As described above, independent claims 1, 17, 21 and 24, and the claims that depend therefrom, have been amended to specify that each of the reaction zones is defined by a bore through the spacer layer. However, Hodges et al. do not teach or even suggest such a structure.

As Hodges et al. do not teach or suggest all of the claimed limitations, a proper *prima facie* case of obviousness cannot be made. Accordingly, the Applicant respectfully requests that this rejection be withdrawn.

Claim 3 has been rejected under 35 USC §103(a) as being unpatentable over Hodges et al. (US 6,413,410) and further in view of Yee (US 5,672,256). As described above, Hodges et al. do not teach all the claimed limitation of independent claim 1, from which claim 3 depends, for at least the reason that Hodges et al. do not teach or suggest an electrochemical test strip having a plurality of reaction zones, wherein each reaction zone is defined by a bore through a spacer layer. As Yee is cited solely for teaching “a plurality of electrochemical reaction zones each having the same reagent composition”, Yee fails to make up for the deficiencies of Hodges, et al. Accordingly, the Applicant respectfully requests that this rejection be withdrawn.

Claims 21 and 23 have been rejected under 35 USC §103(a) as being unpatentable over Hodges et al. (US 6,413,410) and further in view of Leader et al. (US 5,421,981). As described above, Hodges et al. do not teach all the claimed limitation of independent claim 21, from which claim 23 depends, for at least the reason that Hodges et al. do not teach or suggest an electrochemical test strip having a plurality of reaction zones, wherein each reaction zone is defined by a bore through a spacer layer. As Leader et al. is cited solely for teaching “a kit for use

in determining the concentration of an analyte in a physiological sample comprising means for obtaining a physiological sample and an analyte standard”, Leader et al. fail to make up for the deficiencies of Hodges, et al. Accordingly, the Applicant respectfully requests that this rejection be withdrawn.

Claim 22 has been rejected under 35 USC §103(a) as being unpatentable over Hodges et al. (US 6,413,410), Leader et al. (US 5,421,981) and further in view of Guruswamy et al. (US 5,004,583). As described above, Hodges et al. in view of Leader et al. do not teach all the claimed limitation of independent claim 21, from which claim 22 depends. As Guruswamy et al. is cited solely for disclosing lances, Guruswamy et al. fail to make up for the deficiencies of Hodges, et al. in view of Leader at al. Accordingly, the Applicant respectfully requests that this rejection be withdrawn.

Claims 25 and 26 have been rejected under 35 USC §103(a) as being unpatentable over Hodges et al. (US 6,413,410) and further in view of Leader et al. (US 5,421,981). As described above, Hodges et al. do not teach all the claimed limitation of independent claim 24, from which claims 25 and 26 depend, for at least the reason that Hodges et al. do not teach or suggest an electrochemical test strip having a plurality of reaction zones, wherein each reaction zone is defined by a bore through a spacer layer. As Leader et al. is cited solely for teaching “a kit for use in determining the concentration of an analyte in a physiological sample comprising means for obtaining a physiological sample and an analyte standard”, Leader et al. fail to make up for the deficiencies of Hodges, et al. Accordingly, the Applicant respectfully requests that this rejection be withdrawn.

Claims 1, 2, 4, 8-20 and 25 have been rejected under 35 USC §103(a) as being unpatentable over Bergkuist et al. (US 6,123,820) and further in view of Hodges et al. (US 6,413,410). Independent claims 1, 17, 21 and 24, and the claims that depend therefrom, have been amended to recite that each reaction zone is defined by a bore through the spacer layer. However, neither Bergkuist et al. nor Hodges et al. teach or suggest such a structure. Accordingly, the applicants respectfully request that this rejection be withdrawn.

Claim 3 has been rejected under 35 USC §103(a) as being unpatentable over Bergkuist et al. (US 6,123,820) in view of Hodges et al. (US 6,413,410) and further in view of Yee (US 5,672,256). As described above, independent claim 1, from which claim 3 depends, has been amended to recite that each reaction zone is defined by a bore through the spacer layer. However, neither Bergkuist et al. nor Yee teach or suggest such a structure. Accordingly, the applicants respectfully request that this rejection be withdrawn.

Claims 21 and 23 have been rejected under 35 USC §103(a) as being unpatentable over Bergkuist et al. (US 6,123,820) in view of Hodges et al. (US 6,413,410) and further in view of Leader et al. (US 5,421,981). As noted above, independent claim 21, from which claim 23 depends, has been amended to recite that each reaction zone is defined by a bore through the spacer layer. As described above, neither Bergkuist et al. nor Hodges et al. teach or suggest such a structure. As Leader et al. also fail to teach or suggest such a structure, Leader et al. fail to make up for the deficiencies of Bergkuist et al. and Hodges et al. Accordingly, the applicants respectfully request that this rejection be withdrawn.

Claim 22 has been rejected under 35 USC §103(a) as being unpatentable over Bergkuist et al. (US 6,123,820) in view of Hodges et al. (US 6,413,410) and Leader et al. (US 5,421,981) and further in view of Guruswamy et al. (US 5,004,583). As noted above, independent claim 21, from which claim 22 depends, has been amended to recite that each reaction zone is defined by a bore through the spacer layer. As described above, neither Bergkuist et al., Hodges et al. nor Leader et al. teach or suggest such a structure. As Guruswamy et al. also fail to teach or suggest such a structure, Guruswamy et al. fail to make up for the deficiencies of Bergkuist et al., Hodges et al. and Leader et al. Accordingly, the applicants respectfully request that this rejection be withdrawn.

Claims 25 and 26 have been rejected under 35 USC §103(a) as being unpatentable over Bergkuist et al. (US 6,123,820) in view of Hodges et al. (US 6,413,410) and further in view of Leader et al. (US 5,421,981). As described above, independent claim 24, from which claims 25 and 26 depend, has been amended to recite that each reaction zone is defined by a bore through the

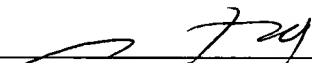
spacer layer. As described above, neither Bergkuist et al., Hodges et al. nor Leader et al. teach or suggest such a structure. Accordingly, the applicants respectfully request that this rejection be withdrawn.

Conclusion

In view of the above amendments and remarks, this application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issuance. The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, Order No. LIFE015.

Respectfully submitted,
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